

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**In re application of:** Blackshear *et al.***Application No.** 10/511,362**Filed:** October 15, 2004**Confirmation No.** 3754**For:** COMPOSITIONS AND METHODS FOR  
DIAGNOSTICS AND THERAPEUTICS  
FOR HYDROCEPHALUS**Examiner:****Art Unit:** 2877**Attorney Reference No.** 4239-64828-02CERTIFICATE OF MAILING

I hereby certify that this paper and the documents referred to as being attached or enclosed herewith are being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: MAIL STOP PCT, COMMISSIONER FOR PATENTS, OFFICE OF PCT LEGAL ADMINISTRATION, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450 on the date shown below.

Attorney or Agent  
for Applicant(s)Date Mailed September 13, 2006

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TRANSMITTAL LETTER

Enclosed for filing in the application referenced above are the following:


- ☒ Renewed Petition Under 37 CFR 1.10
  - ☒ Exhibit A (Decision on Petition Under 37 CFR 1.10 dated July 14, 2006)
  - ☒ Exhibit B (two true copies of Express Mail Label and Certification)
  - ☒ Exhibit C (copy of Application Transmittal Letter)
  - ☒ Exhibit D (USPS tracking printout)
- ☒ The Director is hereby authorized to charge any additional fees that may be required, or credit over-payment, to Deposit Account No. 02-4550. A copy of this sheet is enclosed.
- ☒ Please return the enclosed postcard to confirm that the items listed above have been received.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

One World Trade Center, Suite 1600  
121 S.W. Salmon Street  
Portland, Oregon 97204  
Telephone: (503) 595-5300  
Facsimile: (503) 595-5301  
cc: Docketing

By

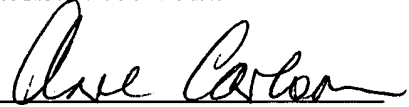
  
Anne Carlson, Ph.D.  
Registration No. 47,472



## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Attorney or Agent  
for Applicant(s)Date Mailed September 13, 2006

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**RENEWED PETITION UNDER 37 CFR 1.10**

Applicants received a Decision on Petition Under 37 CFR 1.10 ("Decision") dated July 14, 2006, for the application referenced above, a copy of which is attached as **Exhibit A**. The Decision acknowledges that the Petition to Correct Filing Receipt (Petition) submitted on June 21, 2005, satisfies 37 CFR 1.10(c)(1) and (2). However, in order to satisfy 37 CFR 1.10(c)(3) Applicants are required to submit a "true copy of the "Express Mail" mailing label (customer receipt) bearing the same "Express Mail" mailing number as identified in the certificate under 37 CFR 1.10 that accompanied the application papers showing that the original papers were, in fact, deposited as "Express Mail" with the United States Postal Service on October 15, 2004."

As stated in the original Petition, Applicants believe that the erroneous filing date on the Filing Receipt arose because the Express Mail receipt was incorrectly dated October 14, 2004, by the United States Postal Service ("USPS"). Applicants submit herewith as **Exhibit B** two true copies of the "Express Mail" mailing label (having label number EV 514604915 US). These two copies are (top



copy) from before the package was delivered to the USPS, showing the "Date of Deposit" at the bottom of the label, correctly handwritten by Applicants' representative, as October 15, 2004; and (bottom copy) from after the package label was completed by an employee of the USPS, showing the "date-in" incorrectly entered by the USPS as October 14, 2004. The October 15, 2004, Date of Deposit written by Applicants' representative matches the date of deposit listed on the Transmittal Letter that accompanied this application to the Patent Office (**Exhibit C**), as well as the acceptance date on the USPS tracking printout for this application (**Exhibit D**). The Transmittal Letter and the USPS tracking printout bear the same Express Mail mailing number (EV 514604915 US) as the Express Mail mailing label.

By this Renewed Petition Applicants request that the USPTO correct the filing date of the application and issue a corrected official Filing Receipt.

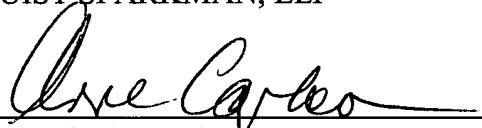
Please contact the undersigned if any further information is required.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

One World Trade Center, Suite 1600  
121 S.W. Salmon Street  
Portland, Oregon 97204  
Telephone: (503) 595-5300  
Facsimile: (503) 595-5301

By

  
\_\_\_\_\_  
Anne Carlson, Ph.D.  
Registration No. 47,472





14 JUL 2006

NH/AC/NMS

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121 S.W. Salmon Street, Suite #1600  
One World Trade Center  
Portland, Oregon 97204-2988

In re Application of  
BLACKSHEAR et al.  
U.S. App. No.: 10/511,362  
PCT No.: PCT/US03/12348  
Int. Filing Date: 18 April 2003  
Priority Date: 19 April 2002  
Attorney Docket No.: 4239-64828-02  
For: COMPOSITIONS AND METHODS FOR  
DIAGNOSTICS AND THERAPEUTICS  
FOR HYDROCEPHALUS

DECISION ON PETITION  
UNDER 37 CFR 1.10

This decision is issued in response to applicants' "Petition to Correct Filing Receipt" which is being treated as a petition under 37 CFR 1.10(c) filed 23 June 2005 requesting that the above-identified application be accorded a (35 U.S.C.) 371(c) filing date of 15 October 2004. Petitioner states that the application was deposited via "Express Mail" pursuant to 37 CFR 1.10.

BACKGROUND

On 14 October 2004, applicants filed a transmittal letter for entry into the national stage in the United States, which accompanied by, inter alia: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a copy of the international application; and an executed declaration.

On 25 April 2005, a Notification of Acceptance was issued identifying the 35 U.S.C. 371(c) date as 14 October 2004. Subsequently, an Official Filing Receipt was issued indicating a "FILING DATE" of 14 October 2004.

On 23 June 2005, applicant filed a "Petition to Correct Filing Receipt." Petitioner avers that the application was deposited via "Express Mail" pursuant to 37 CFR 1.10 on 15 October 2004, rather than 14 October 2004.





### DISCUSSION

37 CFR 1.10(c) states:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and
- (3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

Petitioner has satisfied items (1) and (2) above. However, with regard to item (3), Petitioner has not submitted a true copy of the "Express Mail" mailing label (customer receipt) bearing the same "Express Mail" mailing number as identified in the certificate under 37 CFR 1.10 that accompanied the application papers showing that the original papers were, in fact, deposited as "Express Mail" with the United States Postal Service on 15 October 2004. Thus, a discrepancy has not been shown to exist as required by 37 CFR 1.10(c).

Accordingly, it is inappropriate, on the present record, to accord a filing date of 15 October 2004.

### CONCLUSION

Applicants' petition under 37 CFR 1.10(c) requesting that a filing date of 15 October 2004 is **DISMISSED** without prejudice.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.10."

Any further correspondence with respect to this matter should be addressed to: Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box



1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Anthony Smith

Attorney-Advisor

Office of PCT Legal Administration

Tel: (571) 272-3298

Fax: (571) 273-0459





EV 514604915 US

Mailing Label  
Label 11-F June 2002

UNITED STATES POSTAL SERVICE®

Post Office To Addressee

ORIGIN (POSTAL USE ONLY)		
PO ZIP Code	Day of Delivery <input type="checkbox"/> Next <input type="checkbox"/> Second <input type="checkbox"/>	Flat Rate Envelope <input type="checkbox"/>
Date in Mo. Day Year	<input type="checkbox"/> 12 Noon <input type="checkbox"/> 3 PM	Postage \$
Time in <input type="checkbox"/> AM <input type="checkbox"/> PM	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Return Receipt Fee
Weight lbs. ozs.	Int'l Alpha Country Code	COD Fee Insurance Fee
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Acceptance Clerk Initials	Total Postage & Fees \$

DELIVERY (POSTAL USE ONLY)		
Delivery Attempt	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Mo. Day		
Delivery Attempt	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Mo. Day		
Delivery Date	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Mo. Day		

## CUSTOMER USE ONLY

METHOD OF PAYMENT:

Express Mail Corporate Acct. No.

X972724 -64828

Federal Agency Acct. No. or  
Postal Service Acct. No.

FROM: (PLEASE PRINT)

PHONE 503 226 7391

KLARQUIST SPARKMAN LLP  
121 SW SALMON ST STE 1600  
PORTLAND OR 97204-2988

4239-64828-02

WDN/GLB:gte

Date of Deposit:

10/15/04

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EV 514604915 US

Customer Copy

Label 11-F June 2002



UNITED STATES POSTAL SERVICE®

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ORIGIN (POSTAL USE ONLY)		
PO ZIP Code 97205	Day of Delivery <input type="checkbox"/> Next <input checked="" type="checkbox"/> Second <input type="checkbox"/>	Flat Rate Envelope <input type="checkbox"/>
Date in Mo. Day Year 10 15 04	<input type="checkbox"/> 12 Noon <input checked="" type="checkbox"/> 3 PM	Postage \$
Time in <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Return Receipt Fee
Weight lbs. ozs.	Int'l Alpha Country Code	COD Fee Insurance Fee
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Acceptance Clerk Initials [Signature]	Total Postage & Fees \$ 29.20

DELIVERY (POSTAL USE ONLY)		
Delivery Attempt	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Mo. Day		
Delivery Attempt	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Mo. Day		
Delivery Date	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Mo. Day		

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METHOD OF PAYMENT:

Express Mail Corporate Acct. No.

X972724 -64828

Federal Agency Acct. No. or  
Postal Service Acct. No.

FROM: (PLEASE PRINT)

PHONE 503 226 7391

KLARQUIST SPARKMAN LLP  
121 SW SALMON ST STE 1600  
PORTLAND OR 97204-2988

4239-64828-02

WDN/GLB:gte

Date of Deposit:

10/15/04

TO: (PLEASE PRINT)

PHONE

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EXHIBIT

B



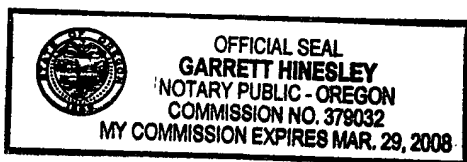
## CERTIFICATION

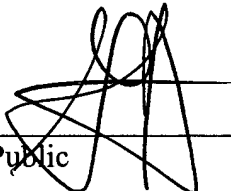
State of Oregon

County of Multnomah

On this 13 day of September, 2006, I Garrett Hinesley, Notary Public in and for the State and County first named above, certify that the attached one page document is a true, exact, complete and unaltered photocopy of the original Express Mail Label number EV 514604915 US, relative to the patent application listed on the accompanying Renewed Petition Under 37 CRF 1.10.

In witness whereof, I have set my hand and seal on this 13 day of September, 2006.

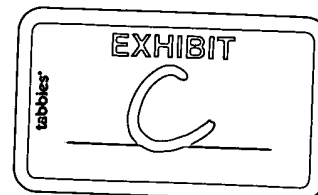


  
\_\_\_\_\_  
Notary Public

[NOTARY SEAL]




FORM PTO-153 U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE <b>TRANSMITTAL LETTER TO THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US) CONCERNING A FILING UNDER 35 U.S.C. § 371</b>		ATTORNEY/AGENT INFORMATION 4239-64828-02 U.S. ATTORNEY/AGENT INFORMATION Not yet assigned
INTERNATIONAL APPLICATION NO. PCT/US03/12348	INTERNATIONAL FILING DATE 18 April 2003	PRIORITY DATE CLAIMED 19 April 2002
TITLE OF INVENTION <b>COMPOSITIONS AND METHODS FOR DIAGNOSTICS AND THERAPEUTICS FOR HYDROCEPHALUS</b>		
APPLICANT(S) FOR DO/EO/US Perry J. Blackshear, Darryl C. Zeldin, Joan P. Graves and Deborah J. Stumpo		
Applicant herewith submits to the United States Designated/Elected Office (DO/EO/US) the following items and other information:		
<ol style="list-style-type: none"> <li>1. <input checked="" type="checkbox"/> This is a <b>FIRST</b> submission of items concerning a filing under 35 U.S.C. § 371.</li> <li>2. <input type="checkbox"/> This is a <b>SECOND</b> or <b>SUBSEQUENT</b> submission of items concerning a filing under 35 U.S.C. § 371.</li> <li>3. <input checked="" type="checkbox"/> This is an express request to begin national examination procedures (35 U.S.C. § 371(f)) at any time rather than delay examination until the expiration of the applicable time limit set in 35 U.S.C. § 371(b) and PCT Article 22 and 39(1).</li> <li>4. <input checked="" type="checkbox"/> A proper Demand for International Preliminary Examination was made by the 19<sup>th</sup> month from the earliest claimed priority date.</li> <li>5. <input checked="" type="checkbox"/> A copy of the International Application as filed (35 U.S.C. § 371(c)(2))           <ol style="list-style-type: none"> <li>a. <input checked="" type="checkbox"/> is transmitted herewith (required only if not transmitted by the International Bureau).</li> <li>b. <input type="checkbox"/> has been transmitted by the International Bureau.</li> <li>c. <input type="checkbox"/> is not required, as the application was filed in the United States Receiving Office (RO/US).</li> </ol> </li> <li>6. <input type="checkbox"/> A translation of the International Application into English (35 U.S.C. § 371(c)(2)).</li> <li>7. <input checked="" type="checkbox"/> Amendments to the claims of the International Application under PCT Article 19 (35 U.S.C. § 371(c)(3))           <ol style="list-style-type: none"> <li>a. <input type="checkbox"/> are transmitted herewith (required only if not transmitted by the International Bureau).</li> <li>b. <input type="checkbox"/> have been transmitted by the International Bureau.</li> <li>c. <input type="checkbox"/> have not been made; however, the time limit for making such amendments has NOT expired.</li> <li>d. <input checked="" type="checkbox"/> have not been made and will not be made.</li> </ol> </li> <li>8. <input type="checkbox"/> A translation of the amendments to the claims under PCT Article 19 (35 U.S.C. § 371(c)(3)).</li> <li>9. <input checked="" type="checkbox"/> A Declaration of Inventorship and Powers of Attorney from the inventors</li> <li>10. <input type="checkbox"/> A translation of the annexes to the International Preliminary Examination Report under PCT Article 36 (35 U.S.C. § 371(c)(5)).</li> </ol>		
Items 11. to 16. below concern document(s) or information included:		
<ol style="list-style-type: none"> <li>11. <input checked="" type="checkbox"/> An Information Disclosure Statement under 37 C.F.R. §§ 1.97 and 1.98.</li> <li>12. <input checked="" type="checkbox"/> An assignment document for recording. A separate cover sheet in compliance with 37 C.F.R. §§ 3.28 and 3.31 and the Recordal fee of \$40.00 is included.</li> <li>13. <input checked="" type="checkbox"/> A <b>FIRST</b> preliminary amendment.  <input type="checkbox"/> A <b>SECOND</b> or <b>SUBSEQUENT</b> preliminary amendment.</li> <li>14. <input type="checkbox"/> A substitute specification.</li> <li>15. <input type="checkbox"/> A change of power of attorney and/or address letter.</li> <li>16. <input checked="" type="checkbox"/> Other items or information:           <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Abstract on a separate page.</li> <li><input checked="" type="checkbox"/> Diskette containing an electronic copy of a Sequence Listing.</li> <li><input checked="" type="checkbox"/> Paper copy of the Sequence Listing, 55 pages.</li> <li><input checked="" type="checkbox"/> Statement in Compliance verifying the identity of the above copies.</li> </ul> </li> </ol>		



EV514604915US



U.S. APPLICATION NO. (If known, see 37 C.F.R. § 1.3) Not yet assigned		INTERNATIONAL APPLICATION NO. PCT/US03/12348		ATTORNEY/DEPOSITARY NUMBER 4239-64828-02	
17. <input checked="" type="checkbox"/> The following fees are submitted:  BASIC NATIONAL FEE (37 C.F.R. §§ 1.492(a)(1)-(9)):  Neither International Preliminary Examination fee (37 C.F.R. § 1.402) nor International Search fee (37 C.F.R. § 1.443(a)(2)) paid to USPTO and International Search Report not prepared by the EPO or JPO ..... \$1,110.00  International Preliminary Examination fee (37 C.F.R. § 1.402) not paid to USPTO but International Search Report prepared by the EPO or JPO ..... \$950.00  International Preliminary Examination fee (37 C.F.R. § 1.402) not paid to USPTO but International Search fee (37 C.F.R. § 1.443(a)(2)) paid to USPTO as an International Searching Authority ..... \$750.00  International Preliminary Examination fee paid to USPTO (37 C.F.R. § 1.402) but all claims did not satisfy provisions of PCT Article 33(1)-(4) ..... \$750.00  International Preliminary Examination fee paid to USPTO (37 C.F.R. § 1.402) and all claims satisfied provisions of PCT Article 33(1)-(4) ..... \$100.00				CALCULATIONS (PTO USD ONLY)	
ENTER APPROPRIATE BASIC FEE AMOUNT =				\$	750.00
Surcharge of \$130.00 for furnishing the oath or declaration later than <input type="checkbox"/> 20 <input type="checkbox"/> 30 months from the earliest claimed priority date (37 C.F.R. § 1.492(e)).				\$	
CLAIMS	NUMBER FILED	NUMBER EXTRA	RATE		
Total claims	59 - 20 =	39	@ \$18.00	\$	702.00
Independent Claims	6 - 3 =	3	@ \$88.00	\$	264.00
MULTIPLE DEPENDENT CLAIM(S) (if applicable)			+ \$230.00	\$	0.00
TOTAL OF ABOVE CALCULATIONS =				\$	1,716.00
<input type="checkbox"/> Reduction of 1/2 for filing by small entity. Small entity status is claimed for this application.				\$	
SUBTOTAL =				\$	1,716.00
Processing fee of \$130.00 for furnishing the English translation later than <input type="checkbox"/> 20 <input type="checkbox"/> 30 Months from the earliest claimed priority date (37 C.F.R. §§ 1.492(f)).				\$	
TOTAL NATIONAL FEE =				\$	1,716.00
Fee for recording the enclosed assignment (37 C.F.R. § 1.21(h)). The assignment must be accompanied by an appropriate cover sheet (37 C.F.R. §§ 3.28, 3.31). \$40.00 per property.				\$	40.00
TOTAL FEES ENCLOSED =				\$	1,756.00
				REFUND →	\$
				CHARGE →	\$
a. <input checked="" type="checkbox"/> A check in the amount of \$ 1,756.00 to cover the above fees is enclosed. b. <input type="checkbox"/> Please charge my Deposit Account No. _____ in the amount of \$ _____ to cover the above fees. A duplicate copy of this sheet is enclosed. c. <input checked="" type="checkbox"/> The Director is hereby authorized to charge any additional fees that may be required, or credit any overpayment, to Deposit Account No. 02-4550. A duplicate copy of this sheet is enclosed. d. <input checked="" type="checkbox"/> Please return the enclosed postcard to confirm that the items listed above have been received.					
NOTE: Where an appropriate time limit under 37 C.F.R. § 1.494 or § 1.495 has not been met, a petition to revive (37 C.F.R. § 1.137(a) or (b)) must be filed and granted to restore the application to pending status.					
SEND ALL CORRESPONDENCE TO THE ADDRESS ASSOCIATED WITH				 SIGNATURE	
CUSTOMER NUMBER 36218				Anne Carlson, Ph.D. NAME	
KLARQUIST SPARKMAN, LLP One World Trade Center, Suite 1600 121 S.W. Salmon Street Portland, OR 97204-2988				47472 REGISTRATION NUMBER	

cc: Docketing





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Your item was delivered at 8:52 am on October 18, 2004 in ALEXANDRIA, VA 22313 to PATENT OFFICE. The item was signed for by M BOSTON. Detailed shipping information has been restored from files offline.

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- ARRIVAL AT PICK-UP-POINT, October 17, 2004, 7:16 am, ALEXANDRIA, VA 22313
- ARRIVAL AT UNIT, October 17, 2004, 6:59 am, DULLES, VA 20102
- ENROUTE, October 16, 2004, 7:01 pm, DULLES, VA 20102
- ENROUTE, October 15, 2004, 6:48 pm, PORTLAND, OR 97238
- ACCEPTANCE, October 15, 2004, 4:33 pm, PORTLAND, OR 97205

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